

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>HAROLD L. SALT KILL</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 186,118 & 211,676
<b>RUBBERMAID SPECIALTY PRODUCTS</b>	)	
Respondent	)	
Self-Insured	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant requested review of the Awards entered by Administrative Law Judge Jon L. Frobish on July 18, 1997. The Appeals Board heard oral argument on February 13, 1998, in Wichita, Kansas.

**APPEARANCES**

James B. Zongker of Wichita, Kansas, appeared for claimant. David S. Wooding of Wichita, Kansas, appeared for respondent. Kendall R. Cunningham of Wichita, Kansas, appeared for the Kansas Workers Compensation Fund (Fund). There were no other appearances.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board is enumerated in the Awards. The Appeals Board adopted the stipulations listed in the Awards. In addition, claimant announced at oral argument that he was withdrawing his appeal from the Award in Docket No. 211, 676. There was no objection to that request. Accordingly, the appeal in Docket No. 211,676 is hereby dismissed.

In Docket No. 186,118, the parties further stipulated and agreed at oral argument that the effective date for the modification of the Award should be December 14, 1995, and that claimant's average weekly wage on that date was \$454.19. Finally, claimant's counsel also

announced that the request for attorney fees, which was taken under advisement by the Administrative Law Judge following the August 22, 1995, preliminary hearing, was being withdrawn.

### **ISSUES**

As a result of the additional stipulations announced at oral argument, the only issue remaining for determination by the Appeals Board is the nature and extent of claimant's disability in Docket No. 186,118.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds that the Award entered by the Administrative Law Judge should be modified to effectuate the agreements of the parties concerning the claimant's average weekly wage and the effective date of the review and modification, but should otherwise be affirmed.

Docket No. 186,118 involves a claim for an October 9, 1993, injury to claimant's back. On April 11, 1995, this claim was settled by an agreed running award which left open the right to review and modification. The settlement called for a lump-sum payment of \$3,809.70. This amount approximated claimant's functional impairment of 3.5 percent based upon his average weekly wage of \$393.42 and would result in a permanent partial disability benefit of \$9.18 per week if paid out over 415 weeks.

On December 29, 1995, claimant filed his application for review and modification of the award alleging he was now entitled to permanent partial disability compensation based upon a work disability. The parties have agreed that the effective date for any modification of the agreed award should be December 14, 1995. The parties also agreed that claimant lost the equivalent of \$60.77 per week when his fringe benefits were terminated by respondent and that this amount should be included in the claimant's gross average weekly wage beginning with the December 14, 1995, effective date of the review and modification award and pursuant to the parties' agreement.

The Administrative Law Judge arrived at a 25 percent work disability award by comparing the vocational experts' opinions concerning the claimant's loss of ability to perform work in the open labor market and to earn comparable wages. The Appeals Board also takes into consideration the claimant's demonstrated post-accident wage-earning ability in the job he has held since being terminated by respondent. Based upon these factors and the record taken as a whole, the Appeals Board also finds claimant possesses a 25 percent permanent partial general disability as of December 14, 1995.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated July 18, 1997, entered by Administrative Law Judge Jon L. Frobish in Docket No. 186,118 should be, and is hereby, modified as follows: The agreed running award approved

on April 11, 1995, by Special Administrative Law Judge James R. Roth is modified to a 25% work disability beginning December 14, 1995.

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Harold L. Saltkill, and against the respondent, Rubbermaid Specialty Products, and the Kansas Workers Compensation Fund, for an accidental injury which occurred on January 13, 1993. Based upon an average weekly wage of \$393.42 for the period from January 13, 1993, through December 13, 1995, claimant received 152 weeks of permanent partial general disability compensation at the rate of \$9.18 per week, or \$1,395.36. For the period commencing December 14, 1995, and based upon an average weekly wage of \$454.19, claimant is entitled to 263 weeks of permanent partial general disability compensation at the rate of \$75.70 per week or \$19,909.10 for a 25% work disability, making a total award of \$21,304.46.

As of February 25, 1998, there would be due and owing to the claimant 152 weeks of permanent partial disability compensation at \$9.18 per week for a total of \$1,395.36 plus 115 weeks of permanent partial general disability compensation at \$75.70 per week for a total of \$8,705.50, for a total due and owing of \$10,100.86 which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance in the amount of \$11,203.60 shall be paid at the rate of \$75.70 per week for 148 weeks.

All other and remaining orders entered by the Administrative Law Judge are adopted by the Appeals Board as its own to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
David S. Wooding, Wichita, KS  
Kendall R. Cunningham, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director